IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

OP.No. 19228 of 2000(L)

PETITIONER:

P.V.ROSAMMA, UPPER PRIMARY SCHOOL ASSISTANT,
PERUMATHATTA P.O., CHUNDALE, WAYANAD DISTRICT.

BY ADV. SRI.P.SANTHOSH KUMAR (PANAMPALLI NAGAR)

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY,GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION (B) DEPARTMENT, THIRUVANANTHAPURAM.**

3. **THE DEPUTY DIRECTOR OF EDUCATION, WAYANAD.**

4. **THE ASSISTANT EDUCATIONAL OFFICER, VYTHIRI.**

5. **THE MANAGER, KALPETTA PANCHAYAT, U.P.S. NOW KALPETTA MUNICIPALITY U.P.S., PERUMTHATTA**

BY GOVERNMENT PLEADER SMT.SMITHA SUKUMARAN
ADV. SRI.A.K.SRINIVASAN
SRI.N.S.MOHAMMED USMAN
SRI.A.S.BENOY

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 25/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.32028 OF 2000 IN O.P.NO.19228 OF 2000

DISMISSED.

25/6/2007 **Sd/- THOTTATHIL B.RADHAKRISHNAN,JUDGE.**

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF APPOINTMENT ORDER DATED 18.11.86 ISSUED BY THE EXECUTIVE OFFICER, KALPETTA PANCHAYAT.

EXT.P2: COPY OF APPOINTMENT ORDER DATED, 1.6.87 ISSUED BY THE EXECUTIVE OFFICER, KALPETTA PANCHAYAT.

EXT.P3: COPY OF LETTER NO.D2329/96 DATED 5.10.1996 ISSUED BY THE 4TH RESPONDENT.

EXT.P4: COPY OF LETTER NO.L.DIS/D4-9519/98 DATED, 29.5.98 ISSUED BY THE 3RD RESPONDENT.

EXT.P5: COPY OF LETTER NO.41103/B2/99/GE DATED,15.12.99 ISSUED BY THE 2ND RESPONDENT.

EXT.P6: COPY OF THIS HON'BLE COURT'S JUDGMENT IN O.P.NO.14199/94 DATED, 28.01.95.

TRUE COPY

P.A.TO JUDGE

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 19228 of 2000-L

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Dated this the 25th day of June, 2007.

JUDGMENT

A permanent vacancy of a UPSA arose in the service of the School of which the 5th respondent is the Manager. The petitioner was appointed as against that vacancy on 18-11-1986. But because of the intervening vacation following 31-3-1987, the Manager terminated her on 31-3-1987 and re-appointed her with effect from 1-6-1987. It is her case that the said artificial break is illegal and by reason of her appointment on 18-11-1986, it is her entitlement for continuity of service from 18-11-1986, without any break since she is even now working.

2. The issue arises in the context of the fact that leave without allowance applied for by her from 6-12-1986 to 27-12-1986 and maternity leave applied for with effect from 31-12-1986 to 29-3-1987 were not permitted to be availed, on the premise that leave available under Rule 88 or Rule 100 of Part I

K.S.R., as the case may be, was not available to the petitioner because, in terms of Rule 49 of Chapter XIV-A K.E.R., the petitioner was not entitled to continue during the vacation.

3. As already noticed, the appointment of the petitioner was in a permanent vacancy. There is no dispute about that. Even now, she is continuing in that vacancy. Therefore, Rule 49 does not stand against the petitioner. (See the judgments of this Court in **Jolly v. State of Kerala** [1975 KLT (SN) 43 (Case No.108)] and **Santha v. State of Kerala** [1982 (2) KLT 549]. The petitioner is accordingly entitled to the reliefs sought for.

4. In the result, this writ petition is disposed of in the following:

(i) Ext.P3 to the extent it rejects the request of the petitioner and Exts.P4 and P5 affirming that decision are quashed.

(ii) The 4th respondent is directed to approve the appointment of the petitioner from 18-11-1986 with

continuity of service and without break in vacation from 1-4-1987 to 31-5-1987.

(iii)The 4th respondent is directed to sanction leave to the petitioner from 6-12-1986 to 27-12-1986 and from 31-12-1986 to 29-3-1987, as applied for by her.

(iv)The respondents are directed to ensure that salary due to the petitioner for the period with effect from 1-4-1987 to 31-5-1987 is duly disbursed in accordance with law at the earliest.

All the aforesaid directions shall be complied within an outer limit of three months from the date of receipt of a copy of this judgment.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 19228 of 2000-L

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JUDGMENT

Dated: 25th June, 2007.